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TYPES OF ELDER ABUSE – TALKING POINTS

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Elder Abuse includes broad conduct such as physical abuse, mental abuse, neglect, sexual exploitation and financial abuse.

1. **Cases that Involve Physical Abuse, Mental Abuse, Neglect and Sexual Exploitation May REQUIRE A SPECIFIC LEVEL OF PROOF OF INJURIES.** For example, *some states require proof of actual injuries; other states require that the conduct be such that will likely cause great bodily injury or death.*

Family members and caretakers (among others) commit every crime imaginable upon the elder that depends on them. Elders are victims of physical abuse such as murder, torture, rape, starvation, theft, and being kept in filthy conditions. Mental abuse such as taunting and bullying (i.e., threatening to hurt an elder's pet or destroy items of sentimental importance, withhold food, or threaten to put the elder in a nursing home if the elder won't give into demands of their family member(s) or caretaker is common.)

2. **Financial Abuse of Elders –Important Dynamics of Prosecuting these Cases.** *It's important to note that many elders can lose their entire life's savings when they are victims of Financial Exploitation. Elder victims of crime are often reluctant to report, especially if they are victims of financial abuse. They feel embarrassed and are worried that exposing their misfortune may lead to their own loss of independence -- which frequently is the thing that they value the most. **ELDER VICTIMS HAVE STATED THAT THEY WOULD RATHER LOSE \$50,000 THAN RUN THE RISK OF LOSING THEIR FREEDOM!***

- *Elder victims of financial abuse have a general misconception that if they come forward and admit that they've been scammed -- government agencies or interfering family members will apply for a conservatorship.*
- *Abuser(s) may be a caretaker or family member of the elder – or scam artists who prey on the vulnerability of elders. And, much like in a child molestation case, they threaten that if the victim reports the crime, they will be abandoned by the abuser and will end up alone in a nursing home – or that they -- or someone/something of importance to them – will be injured or destroyed.*

3. *Too many prosecutors believe that in order to prove theft related cases, the victim must be present to testify. This **IS NOT ALWAYS REQUIRED**. Prosecutors need to understand and distinguish among **THREE TYPES of elder financial scenarios**.*

- (i) *Victim is competent and will testify.*
- (ii) *Victim is lacking in capacity to consent at time of theft. Victims in this scenario will not testify. The prosecutor will demonstrate – through calling medical personnel – that victim lacked the necessary capacity at the time of the transaction (prognosis of Alzheimers, dementia or other disability proves elder was incapable of giving consent). The most obvious witness would be victim's treating physician who would be able to testify to symptoms that were witnessed and which would lend credence to conclusion that victim lacked ability to understand nature of transaction or provide consent. [NOTE: This theory will not work in a situation where the theft is only discovered after the victim has already died and the victim was NOT seen by a medical doctor before death].*
- (iii) *Victim is competent to testify but the theory upon which the prosecutor proceeds is that the victim was unduly influenced. The victim testifies and may in fact "admit" that they consented to the transaction. Prosecution should introduce evidence that victim was unduly influenced by suspect. (In some states [a minority], undue influence is incorporated in the criminal code as a method of theft. In most states it is still merely a civil concept). [NOTE: Prosecutors are getting creative with using the civil concept to explain criminal behavior. In this scenario it is important that the victim has been evaluated by a geriatric psychiatrist who can then testify as to victim's susceptibility to undue influence. However, the victim might refuse to be evaluated, fearing that such evaluation is simply a disguised attempt by the prosecutor to have the victim conserved. Such a refusal can jeopardize the prosecutor's efforts to file the case – so great care should be taken to help the elder understand why such evaluation is in their best interest.]*

*Scenario three above is the **most challenging** for prosecutors. In proving undue influence it's imperative that the prosecutor present expert testimony from a geriatric psychiatrist/ psychologist who has evaluated the victim. Expert renders an opinion as to the victim's susceptibility to undue influence. It is up to the trier of fact to ultimately decide if the victim was unduly influenced. (Attached are useful evidentiary factors.)*

